

JOHN D. HEFFNER, PLLC

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WASHINGTON, D.C. 20036

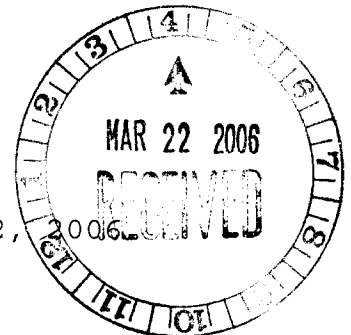
(202) 263-4180

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ORIGINAL

FILED



BY HAND

TRANSPORTATION BOARD

March 22, 2006

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

216060

RE: STB Finance Docket No. 34852, Gordon Reger-Continuance in Control Exemption-Doremus Ave Recycling and Transfer, LLC

STB Finance Docket No. 34853, Doremus Ave Recycling and Transfer, LLC-Operating Exemption

Dear Mr. Williams:

On behalf of Petitioners Gordon Reger and Doremus Ave Recycling and Transfer, LLC, I am enclosing an original and ten copies of:

(1) a verified notice of exemption under 49 CFR 1180.2(d) (2) for the continuance in control by Gordon Reger of Doremus Ave Recycling and Transfer, LLC, and

(2) a verified notice of exemption under 49 CFR 1150.31 for the operation of a line of railroad by Doremus Ave Recycling and Transfer, LLC.

I am also enclosing one check payable to the Board for \$2,600 to cover the applicable filing fees and a computer disk formatted in WordPerfect 8.0 containing these filings.

Please date stamp and return one copy of this filing.

Sincerely yours,

[Signature]
John D. Heffner

Enclosures

cc: Mr. James Cornell

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34852

GORDON REGER
-- CONTINUANCE IN CONTROL EXEMPTION --
DOREMUS AVE RECYCLING AND TRANSFER, LLC

VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR §1180.2(d)(2)

FEE RECEIVED

TRANSPORTATION BOARD

FILED

MAR 22 2006
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
Tel.: (202) 263-4180

Counsel for Petitioner

ENTERED
Office of Proceedings

MAR 23 2006
Office of
Public Record

Dated: March 22, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34852

GORDON REGER
-- CONTINUANCE IN CONTROL EXEMPTION --
DOREMUS AVE RECYCLING AND TRANSFER, LLC

VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR §1180.2(d)(2)

Comes now an individual named Gordon Reger ("Reger") and states as follows:

1. Pursuant to the provisions of Section 1180 of the Board's Railroad Consolidation Rules, 49 C.F.R. §1180 et seq. Reger hereby gives notice of a transaction which qualifies for exemption under §1180.2 of those rules.

2. As may be relevant here, Reger is an individual and a noncarrier who indirectly controls New York Cross Harbor Railroad Terminal Corp. ("NYCH"), a class III rail carrier.¹ A copy of NYCH's operating authority is attached as Exhibit A.

3. Reger and members of his immediate family control Regus Industries, LLC ("Regus"), a noncarrier which directly controls

¹ In FD No. 34813, NYCH corporate affiliate New York New Jersey Rail LLC seeks a corporate family transaction under 49 CFR 1180.2(d)(3) to enable it to acquire the common carrier rights and obligations of NYCH. That transaction is currently being held in abeyance.

New Amsterdam & Seneca Railroad Company, LLC ("NASR"), a recently established company that filed a verified notice of exemption with the Board in Finance Docket No. 34811 to become a class III short line railroad. Upon consummation of that transaction, Reger now indirectly controls a second class III carrier. A copy of the Board's decision exempting NASR's operation is attached as Exhibit B.

4. Reger established Doremus Ave. Recycling and Transfer, LLC ("DART"), a four year old entity that is currently building and will operate a rail-served waste transfer station at the corner of Doremus Ave. and Wilson Ave. in Newark, NJ. The facility is fully permitted by the New Jersey Department of Environmental Protection, is part of the Essex County, New Jersey, Waste Management Plan, and DART has entered into a host fee agreement with the City of Newark. DART's tracks will connect with those of the Conrail Shared Asset Operation and, through it, with the rest of the national rail system. As part of this project, DART is constructing approximately 12,000 feet of railroad trackage and switches to serve its facility. Once this facility is fully constructed and operational, DART intends to handle waste by rail and will hold itself out to provide service as a class III short line railroad common carrier. DART hopes to attract a broad variety of freight to its facility including customers seeking intermodal transportation.

Concurrently with this notice, DART is submitting a verified notice of exemption to operate that rail facility.²

5. Under Section 1180.2(d)(2) of the Board's consolidation rules certain transactions are automatically exempt from the prior approval requirements for common control under 49 U.S.C. §§11323 - 11324. Specifically, Section 1180.2(d)(2) exempts the continuance-in-control of a nonconnecting carrier where (i) the railroads will not connect with each other or any railroad in their corporate family, (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a class I carrier.

6. The properties presently directly or indirectly owned, operated, or managed (or to be owned, operated, or managed) by Reger do not physically connect and there are no plans to acquire additional rail lines for the purpose of making a connection. As noted above, each of these companies is or will be a class III short line railroad and, as illustrated by the map attached as Exhibit C, each provides rail service in the eastern portion of the United States. Upon consummation, DART's property will be located in Newark, NJ. The rail properties currently operated by NYCH and to be transferred to NYNJR are located in Jersey City,

² That exemption has been docketed in Finance Docket No. 34852.

NJ (east and north of Newark and at least 5 miles distant) and in Brooklyn, NJ. The rail properties operated by NASR are located in northern Ohio. There are no plans to connect any of these railroads.

7. In order to claim the Section 1180.2(d)(2) exemption, Section 1180.4(g) requires the filing of a verified notice of exemption furnishing the information requested in Sections 1180.6(1)(i)-(iii); 1180.6(5)-(6); and 1180.6(a)(7)(ii) of those rules and indicating the level of protection required.

Information about the carriers.:

49 C.F.R. §1180.6(a)(1)(i)

Name: Gordon Reger

Address: 2730 Transit Road
West Seneca, NY 14224

Telephone: (716) 675-1200

Name: New York Cross Harbor Railroad Terminal Corp.
New York New Jersey Rail, LLC

Address: 2730 Transit Road
West Seneca, NY 14224

Telephone: (716) 675-1200

Name: New Amsterdam & Seneca
Railroad Company, LLC

Address: 2730 Transit Road
West Seneca, NY 14224

Telephone: (716) 675-1200

Legal counsel to whom questions should be addressed:

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
Tel.: (202) 263-4180
(for Petitioner)

Schedule for consummation: 49 C.F.R. §1180.6(a)(1)(ii)

April 1, 2006

Purpose to be accomplished by the transaction:
49 C.F.R. §1180.6(a)(1)(iii)

To develop a rail served facility that can provide low cost rail service at this newly constructed facility. Rail service is cheaper, more energy efficient, more conserving of valuable land resources, and more environmentally friendly than that provided by truck in the congested northeastern part of the country.

State(s) where proposed operations will be conducted:
49 C.F.R. 1180.6(a)(5)

New Jersey

Map showing relationship between NYCH/NYNJR, NASR, and DART:
49 C.F.R. §1180.6(a)(6)

Attached hereto as Exhibit C.

Copy of Agreement: 49 C.F.R. §1180.6(a)(7)(ii)

N.A.

8. This acquisition of control proceeding is exempt from environmental review under 49 CFR §1105.6(c)(2)(i) because the

proposed action will not cause any operating changes that exceed the threshold established in 49 C.F.R. §1105.7(e)(4) or (5). In addition, this proceeding is exempt from historic review under 49 C.F.R. §1105.8(b)(i) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older as this trackage was recently built.

Accordingly, no historic report is required.

9. Labor protection required: None. Under 49 U.S.C. 11326 transactions between class III rail carriers are not subject to labor protection.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John D. Heffner', written over the typed name.

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
Tel.: (202) 263-4180

Counsel for Petitioner

Dated: March 22, 2006

EXHIBIT A

SERVICE DATE

INTERSTATE COMMERCE COMMISSION

JUL 15 1983

DECISION

Finance Docket No. 30183

NEW YORK CROSS HARBOR RAILROAD TERMINAL CORP.-- EXEMPTION FOR
OPERATION AND ISSUANCE OF SECURITIES

No. AB-219 (Sub-No. 2)

NEW YORK DOCK RAILWAY -- ABANDONMENT -- KINGS COUNTY. NY

Decided: July 8, 1983

By application filed June 3, 1983, the New York Cross Harbor Railroad Terminal Corp. (NYCH) seeks a certificate of public convenience and necessity under 49 U.S.C. 10901 to operate a terminal railroad in the New York, NY area. NYCH also seeks (1) an exemption to issue securities; (2) a waiver of filing fees; and (3) a waiver of any public hearing. In addition, NYCH filed a petition on May 3, 1983 seeking waiver of environment and energy data required under 49 C.F.R. 1150.7. In the alternative NYCH seeks an exemption under 49 U.S.C. 10505. The Brotherhood of Locomotive Engineers (BLE) protests the application. The New York Department of Transportation (NYDOT) has filed comments on the proposal. Numerous local businesses and governmental bodies have filed letters in support of the proposal.

NYCH seeks authority to conduct a rail and marine service in the Borough of Brooklyn, NY and between Brooklyn, NY and Greenville Yard in Jersey City, NJ. Operations are presently conducted by the New York Dock Railway (NYD). NYD has sought, however, authority to abandon all operations in Docket No. AB-219 (Sub-No. 2), New York Dock Railway -- Abandonment -- Kings County, NY.

NYD has agreed to sell assets necessary to conduct the described operations for \$1.5 million. The assets include tracks, locomotives, a tug, floats, floatbridges, and shop, work

and office equipment. NYD will also lease 4 c. floats to NYCH. NYCH has arranged to lease (1) Consolidated Rail Corporation's Greenville yard in Jersey City, NJ (2) New York City's Brooklyn Army Terminal, Bush Terminal and 65th Street Yard (when completed); and (3) the Atlantic Terminal owned by the Port Authority of New York and New Jersey.

To finance the purchase of NYD assets, NYCH has reached an agreement with Northbrook Leasing (Northbrook). Under this agreement, Northbrook will advance \$1.5 million to purchase the NYD assets. The property will be leased to NYCH for 5 years. At the end of this period NYCH will receive title to the assets from Northbrook for a nominal fee. NYCH has also arranged a loan of \$300,000 from the National Bank of North America for working capital. Both agreements will require NYCH to issue promissory notes.

The Commission may begin an exemption proceeding on its own motion. 49 U.S.C. 10505(b). While NYCH has applied for authority to operate under 49 U.S.C. 10901, it has alternatively requested an exemption. It is appropriate to treat its application as a petition for exemption from 49 U.S.C. 10901 under 49 U.S.C. 10505.^{1/} We also note that under the terms of the loan agreement, Northbrook will acquire title to various NYD assets including "track" located at various terminal facilities. Commission authorization is required if a non-carrier acquires rail line unless the acquisition involves spur, industrial, team, switching, or side tracks and the tracks are located or intended to be located entirely in one State (49 U.S.C. 10907). Because it is unclear whether Northbrook's track acquisition is within

^{1/} We will dismiss NYCH's petitions to waive (1) environment and energy data under 49 C.F.R. 1150.7 because this regulation is not applicable in exemption proceedings; (2) oral hearing because oral hearings are generally not required in exemption proceedings and no need has been shown for one here; and (3) filing fees because exemption petitions do not require payment. NYCH's fee will be refunded.

our jurisdiction, on our own motion we will initiate a proceeding to exempt Northbrook from 49 U.S.C. Subtitle IV, and will consider this exemption in this decision.

Pursuant to 49 U.S.C. 10505, the Commission shall exempt a transaction when it finds that (1) continued regulation is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

The rail transportation policy will be fostered by the proposed exemptions. Exemption will minimize the need for Federal regulatory control over the rail transportation system, expedite regulatory decisions, and reduce regulatory barriers for entry into and exit from the industry.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Exemption will merely allow NYCH to substitute its services for those currently provided by NYD. Exemption will also further the interest of existing shippers by assuring continued service over lines which otherwise would be subject to abandonment. We note that numerous shippers support this proposal.^{2/} Since we have determined that regulation is not necessary to protect shippers from an abuse of market power, it is not necessary to consider whether the transactions are of limited scope. However, we note that the operation is limited to small sections of Brooklyn and Jersey City.^{3/}

^{2/} Monarch Wine Co., Inc.; Consolidated Edison Company of New York, Inc.; Gusseo Manufacturing, Inc.; Cumberland Parking Corporation; New York Rail Car Corporation; Gem Parking Corporation; Tri-Borough Transportation Corporation; Express Haulage Corporation; Davidson Pipe Supply Co., Inc.; 23 businesses represented by Southwest Brooklyn Industrial Development Corp.; the Brooklyn Chamber of Commerce; and many businesses in Brooklyn by the Borough of Brooklyn.

^{3/} NYDOT has filed comments addressing NYCH's ability to perform the described services and assume certain NYD contractual obligations. NYDOT has not demonstrated that exemption should be denied. In light of NYD's announced intention to abandon this line and the absence of any other substitute rail carrier, we continue to conclude that exemption should be granted.

The exemption here will enable NYCH to substitute its services for NYD. Accordingly, NYD's abandonment application is no longer appropriate and will be dismissed.

BLE requests that the Commission impose the conditions contained in New York Dock Ry. - Control - Brooklyn Eastern Dist. 360 I.C.C. 60 (1979) and require NYCH to grant first preference to NYD and Brooklyn Eastern District Terminal employees. Under 49 U.S.C. 10505(g) we cannot relieve a carrier of its obligation to protect employees. The imposition of employee protective conditions in proceedings under 49 U.S.C. 10901 is discretionary. No need has been shown for their imposition.^{4/}

Our initial review of the proposal indicates that the exemptions will not affect either the quality of the human environment or energy consumption.

It is ordered:

1. New York Cross Harbor Railroad Terminal Corp. is exempted from the requirements of 49 U.S.C. 10901 to conduct the described terminal railroad operations in the New York, NY area.
2. NYCH's issuance of securities under the described agreements are exempted from the requirements of 49 U.S.C. 11301.
3. Northbrook Leasing's acquisition of the described line is exempted from the requirements of 49 U.S.C. Subtitle IV.
4. Docket No. AB-219 (Sub-No. 2) New York Dock Railway -- Abandonment -- Kings County, NY, is dismissed.

^{4/} The remaining exemptions do not involve any action for which labor protection is required.

Finance Docket No. 30187

5. NYCH's petitions for waiver filed May 3, 1983 and June 3, 1983 are dismissed.

6. Notice shall be published in the Federal Register.

7. The parties shall notify the Commission within 30 days of consummation.

8. These exemptions shall be effective on July 18, 1983.

9. Petitions to reopen must be filed by August 8, 1983.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

(SEAL)

Agatha L. Mergenovich
Secretary

EXHIBIT B

SURFACE TRANSPORTATION BOARD DECISION DOCUMENT
Decision Information

Docket Number: **FD_34811_0**

Case Title: **NEW AMSTERDAM & SENECA RAILROAD COMPANY, LLC-LEASE
AND OPERATION EXEMPTION-LINE IN FOSTORIA, OH**

Decision Type: **Decision**

Deciding Body: **Director Of Proceedings**

Decision Summary

Decision Notes: **PROVIDED NOTICE THAT NEW AMSTERDAM & SENECA RAILROAD
COMPANY A NONCARRRIER, FILED A VERIFIED NOTICE OF
EXEMPTION UNDER 49 CFR 1150.31 TO LEASE FROM SUNNY
FARMS LANDFILL LLC, ALSO A NONCARRIER, AND OPERATE
APPROXIMATELY 1.25 MILES OF RAIL LINE IN FOSTORIA, OH.**

Full Text of Decision

36605 SERVICE DATE – JANUARY 20, 2006

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34811]

New Amsterdam & Seneca Railroad Company, LLC–Lease and Operation Exemption–Line in Fostoria,
OH

New Amsterdam & Seneca Railroad Company (NASR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Sunny Farms Landfill, LLC (Sunny Farms), also a noncarrier, and operate approximately 1.25 miles of rail line in Fostoria, OH. ☞ The line does not have any milepost numbers but it connects with CSX Transportation's Fostoria Subdivision line at milepost BI 36.

NASR certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed \$5 million.

NASR states that the parties propose to consummate the transaction on or after January 15, 2006. ☞

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34811, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on

James E. Howard LLC, One Thompson Square, Suite 201, Charleston, MA 02129.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 12, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary

Decision Attachments

[36605.pdf](#)

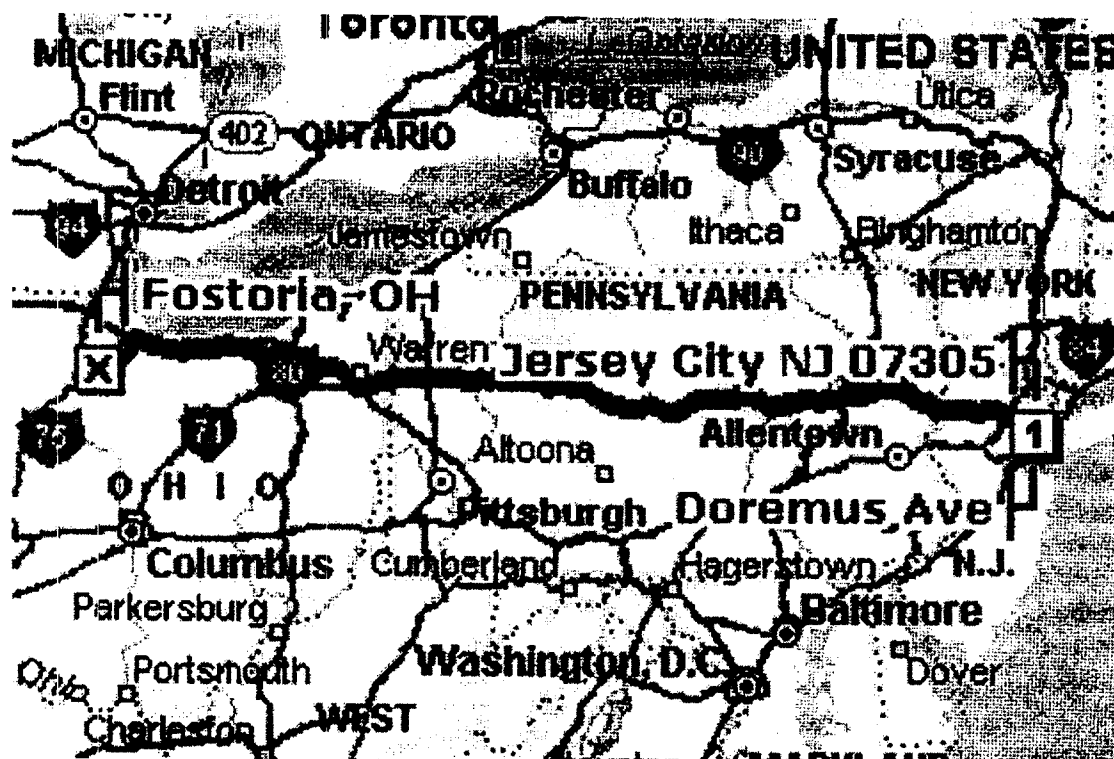
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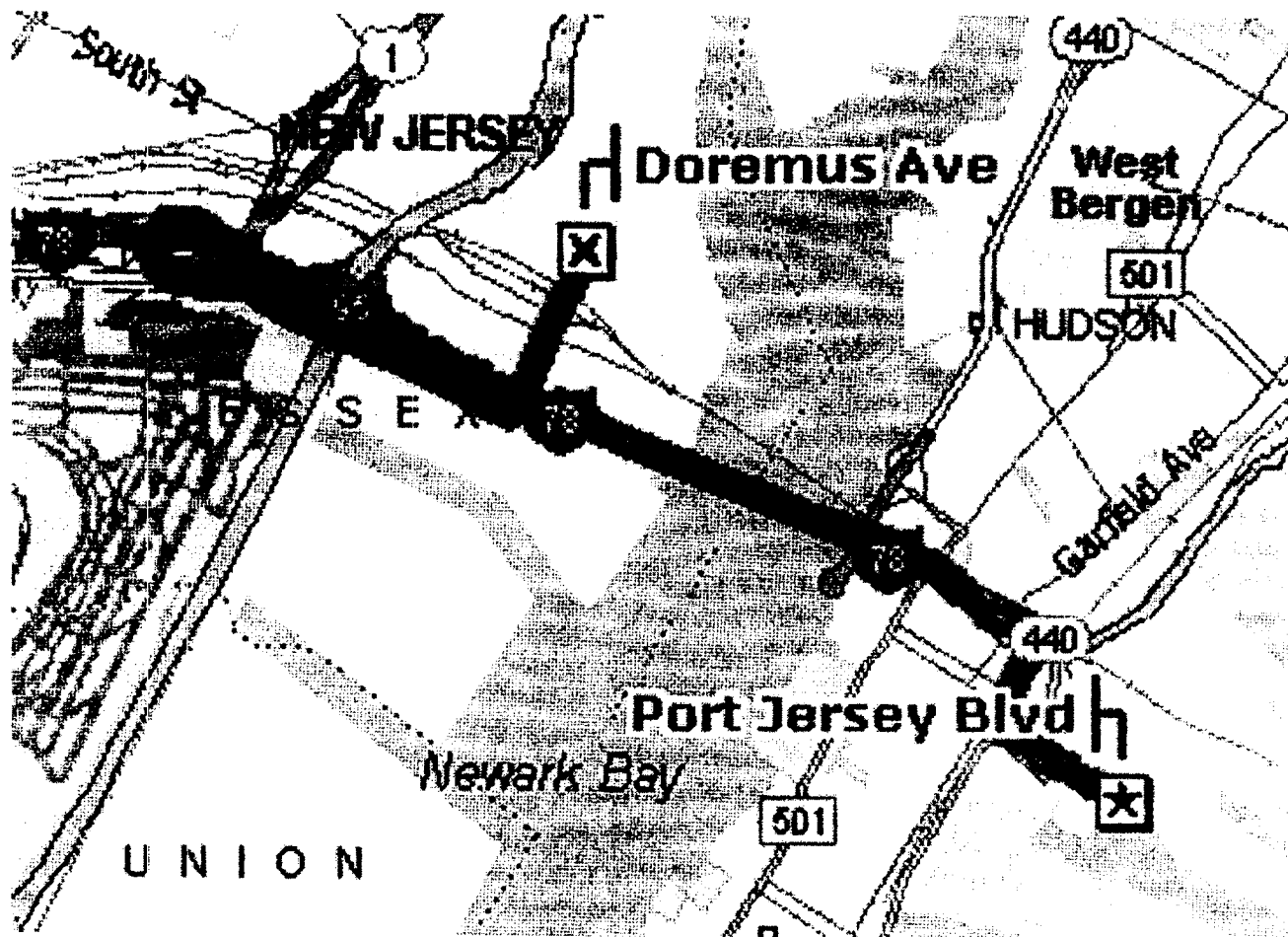
ⓘ Note:

If you do not have Acrobat Reader, or if you have problems reading our files with your current version of Acrobat Reader, the latest version of Acrobat Reader is available free at www.adobe.com.

EXHIBIT C



Depicts relative location of New Amsterdam and Seneca (Fostoria, Oh - x), NYCH (Jersey City, NJ) and Doremus Ave. Recycling and Transfer (Doremus Ave.)

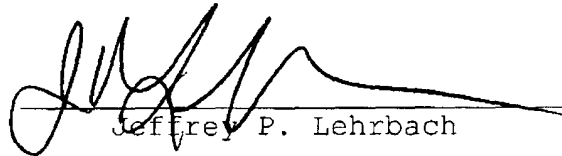


Depicts relative location of DART facility at Doremus Ave. (x) vs, New York Cross Harbor Railroad Terminal Corporation Greenville Rail Yard (*)

VERIFICATION

STATE OF NEW YORK)
) SS
CITY OF BUFFALO)

Jeffrey P. Lehrbach, being duly sworn according to law,
hereby deposes and states that he is authorized to make the
Verification, has read the foregoing document, and knows the
facts asserted therein are true and accurate as stated, to the
best of his knowledge, information and belief.


Jeffrey P. Lehrbach

Subscribed and sworn to before me, a Notary Public, in and for
the City of Buffalo in the State of New York this 22nd day of
March, 2006.


Notary Public

My Commission expires:

May 5, 2007

LINDA K. MIDDAGH
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 5/5/20 07